IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

Crl.Rev.Pet.No. 308 of 1998()

C.C.NO.431/1990 OF JFCM, CHITTUR
CRL.A.NO.92/1994 OF SESSIONS COURT, PALAKKAD

REVN. PETITIONER:
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1. KRISHNANKUTTY, S/O.KUTHIYAN,
AGED 27, KULAPPURA VEEDU,
EDAPPADAM, THIRUVAZHIAD,
PALAKKAD DISTRICT.

2. SURESH, S/O.KANDAN,
AGED 27, KULAPPURA VEEDU,
EDAPPADAM, THIRUVAZHIAD,
PALAKKAD DISTRICT.

BY ADV. SRI.C.P.RAVIKUMAR

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE S.I. OF POLICE, NENMARA,
(CRIME NO.117/89 OF NENMARA POLICE STATION)

BY PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.R.P.No.308 of 1998

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Dated this the 4th day of October, 2007

O R D E R

The accused, two in number, in C.C.No.431/1990 are the revision petitioners. The accused stand convicted for the offence under Section 326 read with Section 34 of the Indian Penal Code and sentenced to undergo simple imprisonment for one year each and to pay a fine of Rs.2,000/- each and in default to undergo simple imprisonment for three months each.

2. The prosecution case is that on 18/07/1989 at 11 a.m, the accused on account of previous enmity attacked the de facto complainant (PW.2) and caused grievous hurt to him.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 14, Exts.P1 to P6 and MOs.1 and 2. Of the occurrence witnesses examined PW.1 did not support the prosecution. The prosecution evidence consisted of the testimony of PWs.2 to 4. PW.2 the de facto complainant has testified as to the incident that on the particular day in the

morning, while he was walking through the ridge in the paddy field after taking bath along with PW.1, the accused confronted him and asked him to return the amount that has been paid to one Mohanan and Baby and that PW.1 replied that they may ask from the above persons themselves and that A1 hit PW.2 with an iron rod below the left knee and he fell down, and A2 stabbed him on the stomach and on the left shoulder and that the intestines protruded. He has stated that PWs.1, 3 and 4 have witnessed the incident. He has stated that he was an inpatient in the hospital for ten days. He has identified the material objects which are recovered, as produced by the accused, according to the prosecution. PWs.3 and 4 have also supported the prosecution version. It is pointed out that PWs.3 and 4 cannot be relied on in view of the fact that they are very close relatives of PW.2.

4. PW.9 the doctor of the Medical College Hospital, Thrissur, who has issued Ext.P5 wound certificate has testified in proof of the same. The injuries sustained were as follows:

1. Stab wound 3 x 1.5 cms. over the right lower abdomen through which loops of small intestine were protruding out.
2. An incised wound 3 x 2 x 4 cms over left shoulder-oblique.
3. An incised wound 3 x 1 x 3 cms oblique over the left scapular area.

The alleged cause mentioned in Ext.P5 tallies with the prosecution version.

5. I find that the evidence of PW.2 contains no infirmities. No contradictions or omissions with his previous statement have been brought out. The same is the case with the evidence of PWs.3 and 4. I find that there is sufficient evidence to justify the concurrent findings of the courts below. I find no reason to interfere in the matter. Conviction is confirmed.

The counsel for the revision petitioners has pleaded for leniency pointing out that about 17 years have lapsed since the commencement of the proceedings and that the accused have

been so far facing the ordeal of the criminal proceedings. It is also pointed out that the de facto complainant and the accused are neighbours and that they have settled their differences. In view of the long delay and the changed circumstances, I find that the imprisonment is not called for. In the circumstances, the sentence imposed for the offence under Section 326 read with Section 34 I.P.C is modified to imprisonment till the rising of the court and to pay a compensation of rupees thirty thousand each to the complainant and in default to undergo simple imprisonment for six months each. The revision petitioners are granted four months time to remit the amount of compensation. They shall appear before the Judicial Magistrate of the First Class, Chittoor, on 03/01/2008 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.R.P.No.308 of 1998

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4th October, 2007